

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

TIMOTHY FROELICH,

Plaintiffs,

vs.

ORDER

Civil File No. 06-3074 (MJD/SRN)

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

This matter is before the Court upon the Report and Recommendation (“R&R”) of United States Magistrate Judge Jeanne J. Graham dated July 19, 2007. Defendant Michael J. Astrue filed his objections to the R&R on August 7, 2007.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.1(c). Based on that review, the Court adopts the R&R, and notes that the most recent revision of the Dictionary of Occupational Titles (“DOT”) was published in 1991, about 16 years ago. The DOT information pertaining to the job classification “surveillance-systems monitor” has not been updated since 1986. See U.S. Dep’t of Labor, Dictionary of Occupational Titles ¶ 379.367-010 (4th ed., rev. 1991). In addition, Mr. Brezinski, the vocational expert who testified before the Administrative Law Judge (“ALJ”) on May 25, 2005, was unable to cite any reliable basis for his opinion that there were 1,000 surveillance-systems monitor positions in Minnesota. This job

classification is the only position cited by Mr. Brezinski for which Plaintiff is allegedly qualified. Because the ALJ's decision must be supported by "substantial evidence in the record as a whole," 42 U.S.C. § 405(g), remand is necessary so that the ALJ can consider whether the surveillance-system monitor position, alone, exists in significant enough numbers to constitute substantial gainful work in the national economy.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's cross-motion for summary judgment [Docket No. 8] is **GRANTED.**
2. Defendant's cross-motion for summary judgment [Docket No. 16] is **DENIED.**
3. This matter is **REMANDED** to the ALJ for additional proceedings as explained above.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 24, 2007

BY THE COURT:

s / Michael J. Davis

The Honorable Michael J. Davis
United States District Court Judge